

**CONTRACT FOR REIMBURSING THE REPLACEMENT OF  
AUXILIARY ENGINES ON THE *SPIRIT OF KINGSTON***

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This contract is entered into between the **Puget Sound Clean Air Agency**, (hereinafter referred to as the "Agency"), a municipal corporation of the laws of the State of Washington, and **King County Department of Transportation**, (hereinafter referred to as the "Vessel Operator"), 201 South Jackson Street, Seattle, WA 98104.

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**WHEREAS**, the Agency has established the Diesel Solutions program to reduce emissions from diesel engine exhaust by retrofitting or replacing existing diesel engines, vehicles, vessels, and equipment used in public and private fleets; and

**WHEREAS**, the Ports of Seattle and Tacoma have adopted the Northwest Ports Clean Air Strategy, the goal of which is to reduce air emissions from current and future maritime port operations in the Pacific Northwest through specific strategies and actions within each category of port operations; and

**WHEREAS**, the Agency has agreed to support the Northwest Ports Clean Air Strategy by pursuing emission reductions from the harbor craft sector of maritime operations; and

**WHEREAS**, the Agency has been awarded a \$372,800 grant from the Washington State Department of Ecology (Ecology), Grant No G1400574, to design a reimbursement program for harbor vessel owners who replace auxiliary engines on their vessels (hereinafter referred to as "the program"); and

**WHEREAS**, the Vessel Operator desires to participate in the program and will replace two unregulated or Tier 1 auxiliary engines on the *Spirit of Kingston* with new Tier 3 or cleaner auxiliary engines that meet the program criteria; and

**WHEREAS**, the Board of Directors of the Puget Sound Clean Air Agency deems it desirable to enter into this contract with the Vessel Operator to provide partial reimbursement for the Vessel Operator's costs to replace auxiliary engines when done in accordance with the requirements of the program; and

**WHEREAS**, the Vessel Operator represents and warrants that it is available, experienced, and qualified to perform said services; and

**NOW, THEREFORE**, the Agency and the Vessel Operator mutually agree as follows:

**1. Purpose.**

The purpose of this contract is to describe the program, determine the roles and responsibilities of the Vessel Operator and the Agency, and determine the procedures for the Agency to reimburse the Vessel Operator for a portion of the purchase cost of the auxiliary engine replacements, not including installation.

## 2. Reimbursement Program Description.

- A. Program Eligibility** The Agency is administering a reimbursement program for harbor vessel owners and operators that replace auxiliary engines on medium-sized vessels (i.e. tugboats, workboats, harbor cruise boats, etc.) to reduce diesel particulate matter (DPM) from maritime-related activities. This program will prioritize harbor vessels that operate solely in the Puget Sound. The program will partially reimburse the replacement of one or two auxiliary engines per vessel, provided that the old existing and the new replacement auxiliary engines meet the requirements shown in Table 1 below:

**Table 1. Engine Eligibility**

	<b>Old Existing Engine</b>	<b>Replacement Engine</b>
<b>Engine Power</b>	20-120 kW	Equivalent to old engine
<b>Engine Certification</b>	Unregulated Engine or Tier 1* Engine	Tier 3 or higher EPA-Certified Engine
<b>Status</b>	Fully Operational	—
<b>Annual Hours of Operation</b>	More than 1000 hours per year	More than 1000 hours per year
<b>Area of Operation</b>	<ul style="list-style-type: none"> <li>• On a harbor vessel in the Puget Sound</li> <li>• At least 50% of the time within King, Kitsap, Pierce &amp; Snohomish counties</li> </ul>	
<b>Other Requirements</b>		Must be purchased from an engine dealer licensed to operate in the state of Washington.

\*Tier 1 Certifications only apply to engines with a displacement of 2.5 liters per cylinder or greater.

All replacement engines must fully comply with U.S. Environmental Protection Agency (EPA) regulations.

### **B. Reimbursement Amounts**

The maximum reimbursement for the new engines, which must be certified at EPA Tier 3 standards or higher, will be determined based on the auxiliary engine's size, as shown in Table 2. The Agency will not provide a reimbursement greater than the equipment purchase cost of a new auxiliary engine.

**Table 2. Maximum Reimbursement Amounts per New Auxiliary Engine**

Engine Size (kW)	Maximum Reimbursement Amounts, per Engine
20-29	\$11,200
30-39	\$12,900
40-64	\$15,200
65-98	\$19,200
99-120	\$21,500

**3. Vessel Operator's Responsibilities.**

**A. Submit a Proposal for Disposing of Old Auxiliary Engines**

The Vessel Operator shall submit a proposal for the method the Vessel Operator will use to dispose of each old engine (scrapping or remanufacturing), including what evidence the Vessel Operator will provide to demonstrate disposal of the engines. The Vessel Owner shall obtain written approval by email from the Agency Project Manager for the proposed method of scrapping/remanufacturing each old auxiliary engine before scrapping it or sending it back to the engine manufacturer.

**Deliverables for 3(A):**

1. The proposal for scrapping each old auxiliary engine or for returning it to the engine manufacturer for remanufacturing is due to the Agency Project Manager in writing one week prior to disposing of the old, existing engines.
2. If the Vessel Operator proposes to remanufacture the old auxiliary engines, documentation from the engine manufacturer describing how the old engine will be remanufactured is due to the Agency Project Manager in writing one week prior to disposing of the old, existing engine.

**B. Remove and Scrap/Remanufacture Old Auxiliary Engines.** The Vessel Operator shall remove each auxiliary engine being replaced under the program and have it scrapped or returned to the manufacturer for remanufacturing to a cleaner certified tier, in accordance with the proposed disposal method approved by the Agency in Section 3(A), above. The Vessel Operator is responsible for all costs associated with removing and scrapping each old auxiliary engine or removing it and returning it to the engine manufacturer for remanufacturing.

**Deliverables for 3(B):**

1. Documentation showing that each old auxiliary engine has either been disabled and scrapped or returned to the engine manufacturer for remanufacturing is due to the Agency Project Manager in writing within two weeks of installing each new engine, but no later than **May 15, 2015**. This documentation must be in the form approved by the Agency Project Manager as part of the Agency-approved engine disposal method {see Section 3(A) and Section 4(A)}.

**C. Purchase and Install New Auxiliary Engines.** The Vessel Operator shall purchase and install two new auxiliary engines on the *Spirit of Kingston*, as described in the Vessel Operator's approved application. The Vessel Operator shall pay all costs associated with the purchase and installation of the new auxiliary engine(s). Leased engines are not eligible for the program. The Vessel Operator may use a third-party contractor to install the new auxiliary engines. The Vessel Operator is responsible for any costs associated with installing the new auxiliary engine(s). The Agency shall have no responsibility to any third-party contractor in relation to this contract or any participation agreement nor shall the Agency be responsible for any costs, delivery of the services, or disputes. Any disputes between the Vessel Operator and the Vessel Operator's third-party contractor are to be resolved by the Vessel Operator and its contractor.

**Deliverables for 3(C):**

1. Installation of the new auxiliary engines must be completed no later than **March 1, 2015**.

**D. Facilitate Verification of New Auxiliary Engines.** The Vessel Operator shall assist the Agency in verifying that each new auxiliary engine has been installed and is operating, by allowing an onsite visit by the Agency or Ecology to:

1. Demonstrate that each new auxiliary engine is installed and operational.
2. Ensure that the installed engine matches the specifications in the approved engine replacement application submitted by the Vessel Operator.
3. Collect data off each new auxiliary engine's plate including but not limited to engine manufacturer, model, year, engine identification number, and kW rating.

The Vessel Operator shall work with the Agency to schedule a site visit with the Agency or Ecology, which shall occur during business hours, Monday through Friday, to verify that each new engine qualifies for the program. The Vessel Operator may propose an alternative method to demonstrate that each new engine qualifies for the program instead of an onsite visit. Approval of any alternative method proposed by the Vessel Operator is at the sole discretion of the Agency Project Manager.

**Deliverable for 3(D):**

1. The verification of each new engine shall take place within one month of engine installation, but no later than **June 1, 2015**.

**E. Submit Reimbursement Documentation.** The Vessel Operator shall follow the procedures described in Section 8, "Compensation," and provide the proper documentation to the Agency Project Manager in order to receive the reimbursement.

**Deliverable for 3(E):**

1. All reimbursement documentation is due to the Agency no later than **June 30, 2015**.

**F. Meet Reporting Requirements**

1. The Vessel Operator shall assist the Agency in complying with Appendix A, Section I, of Ecology Grant G1400574, "Performance Reporting," by providing the following information:
  - a. Upon request by the Agency Project Manager, the Vessel Operator shall provide the Agency updates on the status of its replacement project(s), to assist the Agency with its reporting requirements to Ecology.
  - b. The Vessel Operator shall complete and submit to the Agency Project Manager three annual reports using the form provided in Attachment A, hereby incorporated by reference.

**Deliverables for 3(F):**

1. Requested information under 3(F)1.a regarding the status of the engine replacement project(s) is due to the Agency Project Manager in email within one week of such a request.
2. Annual reports under 3(F)1.b are due to the Project Manager by the following dates: May 31, 2016; May 31, 2017; and May 31, 2018.

**G. Operate the Vessel in the Puget Sound Area at least 50% of the time for Three (3) Years**

1. The Vessel Operator shall operate each vessel with new auxiliary engine(s) under this contract in waterways of the Puget Sound Area at least 50% of the time for at least three years from the date the *Spirit of Kingston*'s new engines were installed. For the purpose of this contract the Puget Sound Area is defined to be the Puget Sound and connecting waterways within the surrounding counties. The percent of operation shall be calculated as follows:

**Equation 1**

$$\text{Operation in Puget Sound (\%)} = \frac{\# \text{ Months of operation in Puget Sound Area during 3 years after installation}}{36 \text{ months of total operation}} * 100$$

2. If the *Spirit of Kingston* operates more than 50% outside of the Puget Sound Area, the Vessel Operator will repay the engine reimbursement to the Agency on a prorated basis. The amount owed to the Agency will be calculated using Equation 2.

**Equation 2**

$$\text{Amount Vessel Operator owes Agency (\$)} = \frac{(\# \text{ Months outside Puget Sound Area} - 18 \text{ months})}{18 \text{ months of total operation}} * \text{Reimbursement (\$)}$$

3. The Vessel Operator may sell or relocate the *Spirit of Kingston* or sell or relocate the new auxiliary engines partially paid for under this contract prior to the end of the three-year term, **provided** the Vessel Operator notifies the Agency Project Manager in writing at least two weeks in advance of selling or relocating the *Spirit of Kingston* and/or the new auxiliary engines **and** the Vessel Operator meets one of the three conditions in Section 3(G)3.b of this contract. The written notification must:
  - a. Include the proposed date and the new location of any proposed relocation of *Spirit of Kingston* **or** the date and new location of any proposed relocation of just the new auxiliary engine(s); and
  - b. Demonstrate one of the following three conditions:
    - i. The Vessel Operator is selling or relocating the *Spirit of Kingston*'s engines to another location within the State of Washington or is selling just the new auxiliary engine(s) to be installed on another vessel operating within the State of Washington;
    - ii. The Vessel Operator will repay to the Agency a prorated portion of the reimbursement received as calculated in Equation 2, above; or
    - iii. The Agency Project Manager has approved in writing an alternative emission reduction option proposed by the Vessel Operator.
4. In the event that a catastrophic event outside the Vessel Operator's control occurs after the engine replacement verification is completed and said event renders the *Spirit of Kingston* and the new auxiliary engine(s) inoperable, the *Spirit of Kingston* is exempt from the three-year retention requirement. Such inoperability shall not be caused by the Vessel Operator's negligence, misuse, or malfeasance. The Vessel Operator shall provide documentation of a catastrophic event to the Agency Project Manager in writing within 30 days of such occurrence.

**4. Agency Responsibilities.**

**A. Review Method of Disposing of Engines**

The Agency will review the Vessel Operator's proposed engine scrapping/remanufacturing method and the Vessel Operator's proposed proof of engine disposal documentation. The Agency will notify the Vessel Operator if the Vessel Operator's proposed scrapping/remanufacturing method(s) and proposed proof-of-disposal documentation meets the requirements of the program within two weeks of receiving each proposal.

**B. Verify Old Auxiliary Engines are Disposed of in Accordance with Approved Method**

The Agency will review documentation for each scrapped/remanufactured engine submitted by the Vessel Operator to ensure that the required documentation has been submitted. Proof-of-disposal documentation must be submitted by the Vessel Operator in the form that was approved by the Agency Project Manager as part of the Agency-approved engine disposal method {see Section 3(A) and Section 3(B)} in order for the Vessel Operator to be eligible for partial reimbursement of the replacement engine costs.

**C. Verify New Auxiliary Engine Installations**

The Agency will work with the Vessel Operator to schedule a site visit, which shall occur during normal business hours, Monday through Friday, to verify that each new auxiliary engine qualifies for the program. Ecology may also participate in such site visits.

During the site visit the Agency Project Manager will:

1. Document that each new auxiliary engine is in working condition.
2. Collect data off the engine plate of each new auxiliary engine including but not limited to engine manufacturer, model, year, engine identification number, and kW rating.

At its sole discretion, the Agency may approve an alternative method of verifying the installation of each new auxiliary engine proposed by the Vessel Operator rather than conducting a site visit.

**D. Provide Reimbursement**

The Agency will reimburse the Vessel Operator provided the Vessel Operator has met all requirements of this contract, including those described in Section 8, "Compensation." The Agency will not provide a reimbursement that is greater than the equipment purchase cost of the new auxiliary engines. The Agency will not reimburse any costs associated with the removal and scrapping of old engines or the installation of the new engines.

**E. Report Program Status to Ecology**

The Agency shall comply with Appendix A, Section I, of Ecology Grant G1400574, "Performance Reporting," and provide periodic reports to Ecology regarding the status of the engine replacements conducted under this grant.



5. **Communications.** The following persons shall be the contact persons for all communications regarding the performance of this contract.

<b>Vessel Operator</b>	<b>Agency</b>	<b>Submit invoices to:</b>
Ron Panzero	Beth Carper	Attn: Finance
King County Department of Transportation Marine Division	Puget Sound Clean Air Agency	Puget Sound Clean Air Agency
201 South Jackson Street Seattle, WA 98104	1904 Third Avenue, Suite 105 Seattle, WA 98101	1904 Third Avenue, Suite 105 Seattle, WA 98101
Phone: 206-255-7537	Phone: (206) 689-4057	Phone: (206) 689-4014
E-mail address: ron.panzero@kingcounty.gov	E-mail address: BethC@pscleanair.org	E-mail address: finance@pscleanair.org

6. **Contract Term.** The effective date of this contract is the date the contract is fully signed. Except for Agency-approved engine replacements that were purchased by the Vessel Operator after September 11, 2014, any costs incurred prior to the effective date of this contract will be at the sole expense and risk of the Vessel Operator. The termination date of this contract is June 30, 2018.
7. **Cooperation with Inspections.** Pursuant to Grant No. G1400574, the Vessel Operator shall make all equipment partially purchased or partially reimbursed under this contract available for inspection by any authorized state, federal, or local representative through June 30, 2018.
8. **Compensation.**

**A. Reimbursement Amount**

The total amount to be reimbursed by the Agency for satisfactory completion of the requirements under this contract shall not exceed twenty two thousand four hundred dollars (\$22,400). The Agency will not provide a reimbursement greater than the equipment purchase cost of each new replacement engine. The Vessel Operator shall initially pay all costs associated with the purchase and installation of each engine. The Agency shall provide reimbursement upon successful compliance by the Vessel Operator with all requirements of this contract and within thirty (30) days after review and approval by the Agency Project Manager.

The funding for this contract is provided by the Ecology Grant No G1400574 and is part of the Agency's budget for Fiscal Year 2015.

- B. Required Reimbursement Documentation.** The Vessel Operator shall submit an invoice and supporting documentation for reimbursement of each new auxiliary engine after the new auxiliary engines has been installed, as follows:

1. An Invoice from the Vessel Operator to the Agency that includes the following:
  - a. Date
  - b. Billing information including where the Agency should send the check
  - c. The make, model, and power rating for each new auxiliary engine.
  - d. The maximum reimbursement amount for each new auxiliary engine.

A sample Invoice form is available upon request.

2. A copy of the Vessel Operator's W-9 form, if applicable.
3. A copy of the invoice from the engine dealer to the Vessel Operator for each replacement engine. To be eligible reimbursement under this contract, the Vessel Operator must have purchased the engines after September 11, 2014.
4. Documentation showing proof of payment to the engine dealer by the Vessel Operator (receipt).

The reimbursement documentation must be submitted no later than June 30, 2015.

The Vessel Operator shall send the request for reimbursement and all reimbursement documentation to the Agency's Finance Department; contact information is in Section 5 "Communications" of this contract.

9. **Ownership of Equipment.** All equipment reimbursed under this contract shall be owned by the Vessel Operator, subject to the terms of this contract.
10. **Communications About Performance.** The Vessel Operator understands that Agency staff members have been encouraged to communicate any concerns about the performance of the Vessel Operator directly and respectfully to the Agency Project Manager in a good faith attempt to resolve any issues. Similarly, if the Vessel Operator has a concern about the performance of the contract or an interaction with an Agency staff member, the Vessel Operator agrees to communicate that concern directly and respectfully to the Agency Project Manager in a good faith attempt to resolve any issues.
11. **Changes.** The Agency may, from time to time, require changes in the scope of services performed under this contract. The parties shall mutually agree to the changes by written amendment to the contract.
12. **Termination.** The Agency may terminate this contract at any time with or without cause by giving a thirty day (30) written notice to the Vessel Operator of such termination and by specifying the effective date of the termination; provided, that the termination shall be preceded by a face-to-face meeting between the Vessel Operator and the Agency. Upon termination of this contract, the Agency, in addition to any other rights provided in this contract, may require the Vessel Operator to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated.  
The Agency shall pay to the Vessel Operator the amount agreed upon by the Vessel Operator and the Agency for (i) completed work and services for which no separate price is stated, (ii)



partially completed work and services, and (iii) other property or services which are accepted by the Agency, unless the termination is for default, in which case the Agency shall determine the extent of the liability of the Agency. The Agency may withhold from any amounts due the Vessel Operator such sums as the Agency determines to be necessary to protect the Agency against potential loss or liability.

13. **Agency Access to Data.** The Vessel Operator shall provide the Agency, at no additional charge, access to all data generated under this contract. "Data" includes all information that supports the findings, conclusions and recommendations with respect to the new auxiliary engines, including computer models and the methodology for those models.
14. **Agency Use of Information.** At no additional charge, the Agency is entitled to use any data generated under this contract in Agency communications, reports or documents.
15. **Vessel Operator Not An Employee of the Agency.** The Vessel Operator and the Agency intend that an independent contractor relationship will be created under this contract. The Vessel Operator and his or her employees or agents are not employees of the Agency and shall not be entitled to compensation or benefits of any kind other than as specifically provided herein. The Vessel Operator will not hold himself/herself out as nor claim to be an officer or an employee of the Agency or of the State of Washington by reason hereof, nor will the Vessel Operator make any claim of right, privilege or benefit which would accrue to an employee under the law. Conduct and control of the work will be solely with the Vessel Operator.
16. **Indemnification.** The Vessel Operator shall release, indemnify, defend and hold harmless the Agency, its Board of Directors, officers, employees and agents from and against any and all liability, loss, damage, expense, actions, or claims, including costs and attorney's fees which the Agency, its Board of Directors, officers, employees and agents may hereafter sustain, incur, or be required to pay asserting or arising directly or indirectly due to any act or omission of the Vessel Operator, its agents, employees or subcontractors, in the execution, performance or failure to adequately perform the Vessel Operator's obligations pursuant to this contract; provided, however, this paragraph does not purport to indemnify the Agency against liability for damages arising out of bodily injuries to persons or damages caused by or resulting from the sole negligence of the Agency, its Board of Directors, its officers, employees and agents in the execution, performance or failure to adequately perform its obligations pursuant to this contract.
17. **Payroll and Taxes.** The Vessel Operator assumes full responsibility for the payment of all wages, payroll taxes, use, sales, income or other form of taxes, fees and licenses.
18. **Licensing, Accreditation, and Registration.** The Vessel Operator shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards, necessary for the performance of this contract.
19. **Industrial Insurance Coverage.** The Vessel Operator shall provide or purchase industrial insurance coverage prior to performing work under this contract and shall maintain full compliance with Chapter 51.12 RCW during the term of this contract. The Vessel Operator

shall require any third-party contractors to provide or purchase industrial insurance coverage prior to performing work related to this contract and to be in compliance with Chapter 51.15 RCW. If the Vessel Operator or the Vessel Operator's third-party contractor installing the auxiliary engines is exempt from the requirements of Chapter 51.12 RCW, he/she must carry appropriate liability insurance equivalent to the coverage provided under that chapter. The Agency will not be responsible for the payment of industrial or liability insurance premiums or for any other claim or benefit for this Vessel Operator, or any third-party contractor or employee of the Vessel Operator, which might arise under the industrial insurance laws during the performance of duties and services under this contract. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the Vessel Operator and the Vessel Operator shall indemnify the Agency and guarantee payment of such amounts.

20. **Limitation of Authority.** Only the Agency's Project Manager shall have the express, implied or apparent authority to alter, amend, modify or waive any clause or condition of this contract except for clauses or conditions required by law. Furthermore, any alteration, amendment, modification or waiver of any clause or condition of the contract is not effective or binding unless made in writing and signed by the Agency's Project Manager
21. **Governing Law.** This contract shall be governed by the laws of the state of Washington. The Vessel Operator, by execution of the contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.
22. **Severability.** The provisions of this contract are severable. If any provision is illegal or invalid for any reason whatsoever, that illegality or invalidity shall not affect the validity of the rest of the contract.
23. **Nondiscrimination.** During the performance of this contract, the Vessel Operator shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the Vessel Operator's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Vessel Operator may be declared ineligible for further contracts with the Agency. The Vessel Operator shall, however, be given a reasonable time in which to remedy this noncompliance.
24. **Utilization of Minority and Women-Owned Business Enterprises (MWBE).** To the extent practicable, when performing the services agreed to under this contract, the Vessel Operator should utilize MWBEs certified by the Office of Minority and Women's Business Enterprises under the state of Washington certification program.
25. **Assignment.** The work provided under this contract, and any claim arising thereunder, is not assignable or delegable by either party, in whole or in part, without the express prior written consent of the other party.

26. **Attorneys' Fees.** In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorneys' fees and costs.
27. **Content and Understanding.** This contract contains a complete and integrated understanding and contract between the parties. No other statements or representations, written or oral, shall be deemed a part hereof.
28. **Third-Party Beneficiary.** Pursuant to Grant No. G1400574, the State of Washington is an express third-party beneficiary to this contract with full rights as such.
29. **Comply with Federal Laws.** The Vessel Operator shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.
30. **Subcontracting.** Except as authorized under Section 3(C) for the installation of a new engine, the Vessel Operator shall not enter into subcontracts for any of the services or work contemplated under this contract without obtaining prior written approval of the Agency Project Manager. In no event shall the existence of any subcontract operate to release or reduce the liability of the Vessel Operator to the Agency for any breach in the performance of the Vessel Operator's duties.

**THIS CONTRACT** is executed by the persons signing below, who warrant they have the authority to execute the contract.

**PUGET SOUND CLEAN AIR AGENCY**

**KING COUNTY DEPARTMENT OF  
TRANSPORTATION**

By: 

Craig T. Kenworthy  
Executive Director

Date: 12/03/14

By: 

Paul Brodeur  
Marine Division Director  
King County Dept. of Transportation  
Date: 12/22/14

Approved as to Form:

By: 

Laurie Halvorson  
Director of Compliance and Legal

Date: 12/22/14